IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 76 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA : Sd/-

HONOURABLE MR.JUSTICE KS JHAVERI : Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHANJUBHAI SAVLUBHAI GADAR (VARLI) - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MADANSINGH O BAROD for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 13/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This Criminal Appeal under Sec.374 of the Code of Criminal Procedure ('the Code' for short) has been filed by the appellant-original accused, who has been convicted to suffer RI for life and to pay a fine of Rs.2,000/-, in default, to suffer RI for two months for the offence punishable under Section 302 of the Indian Penal Code vide judgment and order of conviction dated 30.12.1999 delivered by the Learned Addition Sessions Judge, Valsad at Navsari, in Sessions Case No.205 of 1998. However, Learned Additional Sessions Judge acquitted the appellant-accused of the offence under Sections 506(1) of the Indian Penal Code and under Section 135(1) of the Bombay Police Act.

2. The case of the prosecution in short, is as under:

2.1 On 09.07.1998 at about 12:30 p.m., one Karshanbhai Laxmibhai Gunguniya disclosed the commission of an offence before Kaparada Police Station alleging inter alia that on 08.07.1998 at about 4 p.m., when he was sitting in the house of his friend viz., Ramesh, he heard some altercation between the appellant-accused and the deceased and, hence, he went there and saw that the appellant-accused was dragging his father towards his house and, thereafter giving blows of wooden log, as a result of that, his father fell down. The complainant tried to save his father, but the appellant-accused threatened him and, hence, he went to the house of his sister viz., Janaki and informed her regarding the incident. Thereafter, he went to the house of his another sister viz., Babli, but nobody was present there and, thereafter, he reached the scene of offence, where he found that his father succumbed to the injuries and nearby persons were gathered

there. They waited near the dead body for whole night and on the very next day, he lodged the complaint, which came to be registered as Kaparad Police Station I-C.R.No.57/1998 for the offence under Sections 302 and 506(1) of the Indian Penal Code. Thereafter, the P.S.O. handed over the investigation along with the yadi, FIR and report to Police Inspector. In pursuance of that, he started further investigation. He drew the inquest panchnama in the presence of panchas, filled up Maranottar Form and also made arrangement to send the dead body for postmortem along with the Maranottar Form, inquest panchnama and yadi. Simultaneously, he also went to the scene of offence and drew the scene of offence panchnama in the presence of panchas and seized the muddamal. He also recorded the statements of various witnesses and arrested the accused persons. He also sent muddamal to FSL along with forwarding letter and also collected the

postmortem report. He also tried to search the accused and as he surrendered himself before the Police along with muddamal wooden log and same was seized in the presence of panchas and also prepared arrest panchnama and sent the appellant-accused into judicial custody. On receiving the FSL report, same was kept along with the investigation file. Upon completion of investigation, he submitted the charge sheet against the appellant-accused before the Learned Judicial Magistrate, First Class, Dharampur.

2.2 As the offence alleged against the accused was exclusively triable by the Court of Sessions, same was committed to the Court of Sessions at Valsad, where it was numbered as Sessions Case No.205 of 1998.

2.3 Thereafter, the case was transferred and placed for trial before the learned Additional Sessions Court, Valsad at Navsari for disposing the same on merits and on production of the accused, the Learned

Additional Sessions Judge framed charge vide Exh.2, wherein the appellant-accused pleaded not guilty to the charge and claimed to be tried.

2.4 To prove the charge against the accused, prosecution examined, in all, 9 witnesses and also placed reliance upon several documentary evidence. On submission of closing purshis by the prosecution, learned Additional Sessions Judge recorded further statement of the accused under Sec.313 of Cr.P.C. qua the incriminating question wherein the accused came out with the case of total denial. The accused did not examine any witness nor stepped into the witness box. Therefore, after hearing the learned counsel appearing for the respective parties, learned Addl. Sessions Judge delivered the impugned judgment giving rise to file the present appeal.

3. We have heard learned counsel for the appellant, Mr.M.O. Barod and learned

Additional Public Prosecutor, Mr.H.L. Jani for the respondent-State. We have been taken through various oral as well as documentary evidence and the reasoned judgment delivered by the Court below.

4.1 Learned counsel for the appellant-accused, Mr.Barod has concentrated his arguments upon the oral evidence of P.W.No.2 viz., Karshanbhai Laxmibhai Gunguniya, Exh.10, who is son of the deceased and also claimed to be a partly eye witness along with the evidence of P.W.No.3 viz., Babliben Naginbhai Varli, Exh.12 and P.W.No.4 viz., Jankiben Maganbhai Varli, Exh.13, who are the sisters of the complainant and the daughter of the deceased.

4.2 He has also taken us through the oral evidence of P.W.No.1 viz., Dr.Subhashbhai Bhagubhai Patel, Exh.6, who has performed the postmortem of the dead body of the deceased and issued P.M.Note (Exh.7) as well as cause of death certificate (Exh.8) and concentrated his arguments that except the complainant,

there are no other witness of incident, which connect the accused with the crime in question.

4.3 It has been argued that admittedly, at the time of incident, the complainant was sitting in the house of one Ramesh and the distance between the house of Ramesh and scene of offence is such that they could not have heard any altercation or could not have seen the offence from taking place and, hence, he is not the witness of incident and his evidence is not trustworthy, not free from doubt and not believable. It is argued that as he is the son of the deceased, he himself has filed the complaint and become the eye witness.

4.4 It is also argued that except the complainant, all the important witnesses viz., Jankiben, Babliben, Kamubhen and Rameshbhai are not supporting the case of the prosecution and have been declared hostile. It is true that the death of the deceased is

homicidal one, but the prosecution has failed to connect the accused with the crime in question and, therefore, according to him, the benefit should be given to the appellant-accused.

5. Mr.H.L. Jani, learned Additional Public Prosecutor, who appears on behalf of the respondent-State has taken us through the above referred evidence, upon which, reliance has been placed by the learned counsel for the appellant. It is submitted that it is true that whole prosecution case is based on the evidence of the complainant, who is son of the deceased and his evidence is trustworthy and, therefore, it does not require any corroboration. Mr.Jani has, therefore, urged that the learned trial Judge was perfectly justified in coming to the conclusion that the appellant-accused has committed the crime and, therefore, the Court should not interfere with the same.

6.1 We have gone through the oral as well as

documentary evidence shown to us by the learned counsel for the respective parties together with the reasoned judgment delivered by the court below, more particularly, evidence of P.W.No.2 viz., Karshanbhai, Exh.10, whose evidence is at page no.59 of the paper book. This witness, in his examination-in-chief, has categorically stated that he has not seen the accused, but he came to know about the altercation between his father and the appellant-accused, which indicates that he has not seen the incident in question, but he came to know about the same through somebody else. He has also deposed that as soon as he came to know about the incident, he first went to the house of his sister and after informing her, he went to the house of his another sister viz., Babli, but she was not at home and, hence, he came back to scene of offence and saw that his father was lying dead on the 'otla' of hut of Bhanjibhai (appellant-accused) and

nobody else was there. He has deposed that in the morning, he went to the Police Station along with 2-3 villagers and filed the complaint. He has also deposed that the accused had dragged his father and while doing so, he gave wooden log blow to his father. He identified the appellant-accused as also the muddamal wooden log as muddamal article no.3. He has admitted in cross-examination that, the Sarpanch of the village informed the Police by way of phone on the very same day. He has also admitted that he has not narrated in the FIR that the prior to the incident, altercation had taken place between the deceased and the appellant-accused and the accused was calling his father as bitch.

6.2 Certain questions have been asked by the learned counsel for the appellant-accused in the Court below regarding the conduct of the witness. Except that, the star witness viz., Rameshbhai (P.W.No.5, Exh.14) has not

supported the say of the prosecution in toto. On the contrary, it has come out from the evidence of Ramesh that the appellant-accused and his family were not at home as they had gone to some other village. In short, Ramesh is not supporting the say of the prosecution.

6.3 Simultaneously, P.W.No.3, Babli and P.W.No.4, Janki, who are the real sisters of the complainant have not supported the say of the prosecution in toto. Even, they have deposed that their brother has not visited their house though the complainant has categorically deposed in his evidence.

6.4 Simultaneously, P.W.No.8, Kamuben has also not supported the say of the prosecution. In short, except the evidence of Karshanbhai, there are no other evidence on record to connect the accused with the crime in question. On the contrary, it reflects from other evidence on record that the evidence of complainant is not trustworthy. Not only that, it is also required to be kept in mind

that at the time of incident admittedly, the complainant was sitting in the house of Rameshbhai and, therefore, his presence at the time of incident creates doubt in the mind of all concerned and it requires some corroboration.

6.5 Over and above, it appears from the evidence on record that there are lot of people, who were not happy with the act of the deceased and, therefore, there is possibility that somebody else might have killed the deceased.

6.6 As far as muddamal wooden log is concerned, as per the prosecution case, same has been produced by the appellant-accused, but the blood stain was not found on the muddamal wooden log. It is required to be noted that the clothes of the deceased were also seized, but no blood stain was found on the muddamal clothes also log. As per the record, the accused was arrested at the earliest. Not only that, the prosecution has also proved the homicidal death, P.M.Note (Exh.7) and

cause of death certificate (Exh.8) by way of oral evidence of Dr.Subhashbhai Bhagubhai Patel (P.W.No.1, Exh.6). However, same is not disputed by the learned counsel for the appellant-accused and, therefore, we are not discussing further into the matter.

6.7 In view of the above, we share the same view that the death of the deceased is homicidal death. Now the question arises as to whether the prosecution has been able to connect the accused with the crime in question. In our opinion, the answer is 'No' mainly on the ground that the evidence of Karshanbhai is not trustworthy and it requires corroboration. If we evaluate the evidence in its entirety, there are material contradictions among the evidence of the witnesses. Even other witnesses are also not supporting the prosecution case at all. Admittedly, at the time of incident, Karshanbhai was in the house of Ramesh. Had he been there then, definitely, he would have

reached the scene of offence rather than going to inform his sister and said fact is denied by both sisters, which creates doubt in the mind of the Court. Therefore, according to us, his evidence requires some corroboration. Since his evidence could not be corroborated by any other available evidence on record, the benefit of doubt is required to be given to the appellant-accused. We have kept in mind the fact that he has already undergone sentence of more than 9 years and, therefore also, the benefit of doubt is required to be given to the accused.

7. In the result, Criminal Appeal is allowed. Judgment and Order of conviction and sentence dated 30.12.1999 delivered by the Learned Additional Sessions Judge, Valsad at Navsari in Sessions Case No.205 of 1998 are quashed and set aside. He is therefore ordered to be set at liberty forthwith, if not required in any other offence.

Sd/- *Sd/-*

(R.P.DHOLAKIA, J.) ***(K.S.JHAVERI, J.)***

/patil